JD(NY)–36-03
White Plains, NY

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES
NEW YORK BRANCH

UNITED CEREBRAL PALSY ASSOCIATION OF WESTCHESTER COUNTY, INC.

AND

UNION OF NEEDLETRADES, INDUSTRIAL AND TEXTILE EMPLOYEES (UNITE), AFL-CIO, CLC

CASES
2-CA-34555-1
2-CA-34900-1
2-CA-35254

Allen Rose Esq.,
for the General Counsel.
Andrew P. Marks Esq.,
for the Respondent.
Jessica Drangel Esq.,
for the Union.

DECISION

Statement of the Case

Raymond P. Green, Administrative Law Judge. I heard this case in New York, New York on May 6 and 7, 2003. The charge in 2-CA-34555-1 was filed on April 22, 2002, the charge in 2-CA-34900-1 was filed on September 20, 2002 and the charge in 2-CA-35254 was filed on February 25, 2003. Complaints in the first two were issued on June 28, 2002 and they were consolidated on March 7, 2003. Thereafter, an additional Consolidated Complaint was issued on April 18, 2003.[1] In substance, the allegations were as follows:

1. That on February 4, 2002, the Respondent unilaterally and without bargaining implemented a break schedule for unit employees.

2. That in or about June 2002, the Respondent bypassed the Union and dealt directly with employees by holding a vote among them in order to determine their preference regarding their holiday schedule.

[1] At the hearing, the Respondent agreed to go forward with this case notwithstanding the fact that there was another charge, which had been filed by the Union and was in the process of being investigated. Respondent explicitly waived any contention that it may have under *Jefferson Chemical Company, Inc.*, 200 NLRB 992, 994. In a related manner, the Union although requesting that I hear the facts of this case, asked that I keep it open until after the Region decides whether to issue a Complaint in the pending charge, and to consolidate this case with any newly issued Complaint. As this would, in my opinion, unduly delay the processing of this matter, I rejected the Union's motion.

3. That in or about November 2002, the Respondent unilaterally and without bargaining reduced the work hours of Pamela Patterson.

4. That in or about November 2002, the Respondent unilaterally and without bargaining, ceased providing holiday and bereavement pay to part-time employees in the day treatment center.

5. That in or about January 2003, the Respondent unilaterally and without bargaining discontinued the practice of releasing employees early on the Friday before a holiday occurring on a Monday.

Based on the evidence as a whole, including my observation of the demeanor of the witnesses and after consideration of the Briefs filed, I hereby make the following findings and conclusions.

Findings and Conclusions

I. Jurisdiction

It is admitted that the Respondent is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act. It also is admitted that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. Alleged Unfair Labor Practices

(a) Background

The Respondent operates a facility in Westchester, New York where it offers day treatment programs for people with cerebral palsy and other severe disabilities. These people are referred to by the parties as the "consumers."

Pursuant to an NLRB election held on January 11, 2002, the Union was certified as the exclusive collective bargaining representative in an appropriate unit consisting of all full time and regular part time non-professional employees, including drivers, therapy aides, vocational trainers, teacher's aides, rehabilitation aides, habilitation trainers, recreational assistants, maintenance employees, occupational therapy aides, day care aides, senior aides, program assistants, support specialists, teacher's assistants, child caseworkers, cooks, wait staff, behavioral assistants and job coaches, employed by the Employer at and out of its facilities located at 1186 King Street, Rye Brook, New York, 456 North Street, White Plains, New York and Jack's Brookside Café, Lincoln Avenue, Rye Brook, New York.

Following the Certification, contract negotiations began on January 31, 2002 but the parties have not been able to reach and agreement by the time of this hearing. The contents of those negotiations are not discussed here because there is no allegation that the Respondent engaged in bad faith bargaining.

(b) Implementation of a Break Schedule

On February 4, 2002, John Garnett, the Manager of Team 3, (consisting of about 6 of the 90 plus unit employees), posted a handwritten memorandum for his group stating;

Smoking breaks must be taken between the following times in order to

> minimize disruption to the team process and allow for maximum programming to our consumers.
>
> 9:15 a.m. to 9:30 a.m.
> 11:25 a.m. to 11:40 a.m.
> 1:25 p.m. to 1:40 p.m.
> 2:15 p.m. to 2:30 p.m.
>
> There will be allowed two smoking breaks per day from the above time frame choices. (5 min. break)
> Exceptions – extra recreation, early dismissal, trips, early lunch.
> Please consult team manager or supervisor in charge for questions or concerns.

The General Counsel presented one witness, Catherine Gillen, a senior aide on Team 3 who testified that before this memorandum, there was no formal system of taking short breaks; that an employee would make sure that there was sufficient coverage and after telling the other employees on duty, would go outside for five minutes to smoke a cigarette or get a snack.

According to Gillen despite the posting of the memorandum on February 4, there really was no change because breaks could only be taken when circumstances with the consumers allowed, and therefore it was impossible to fit these breaks into defined time slots.

> JUDGE GREEN: … But after this memo, what if any changes were made?
> THE WITNESS: It really didn't change the way staffing took breaks at all because you had to be concerned about the consumers. And if there wasn't time to take a break between 9:15 and 9:30 because we had to toilet a consumer or something was happening or someone was having a behavior problem you would take it at another time. As long as you had enough staffing in the room you would just go to the other person in the room, "Listen, I'm going to take five minute," and you would take your five-minute break.

There were no other witnesses concerning this subject and therefore I will take Gillen's testimony as accurate. And in accordance with her testimony, I conclude that notwithstanding Garnett's posting of the February 4 memorandum, which potentially affected only the employees on Team 3, and which was immediately ignored thereafter, did not constitute a material change in the terms and conditions of bargaining unit employees. Accordingly, I conclude that in this respect, the Respondent did not make a unilateral change and did not violate Section 8(a)(5) of the Act.

(c) Change in Pamela Patterson's Hours of Work

The claim here is that in or around November 10, 2002, Patterson was told by John Garnett that her schedule would henceforth be from 10:00 a.m. to 2:00 p.m. (4 hours per day). The General Counsel claims that although Patterson, when she was first hired, was scheduled to work from 10:00 a.m. to 2:00 p.m., she was given, for a period of more than 2 years, a schedule that was from 8:30 a.m. to 3:00 p.m. (6 ½ hours per day).

The General Counsel assets that this change entailed a reduction in Patterson's normal preexisting hours of work and therefore, the Respondent had an obligation to first notify and bargain with the Union before doing this. (There is no dispute that the Respondent did not notify the Union before making this change). It is not claimed that the Respondent made a change in the work schedules of any other employees or that it changed the method of

scheduling in a way that would affect unit employees in general.

Initially Patterson was hired by the Respondent to work as a part-time aide and worked four hours per day, from 10 a.m. to 2 p.m. (Four hours). After some time, she was asked to work additional hours. But although she often worked from 8:30 a.m. to 3:00 p.m. (6 ½ hours), this was not consistent. Thus, her payroll records for the first three quarters of 2001 show that there were many days when she worked 4 or fewer hours and many days when she worked in excess of 4 hours per day. Nevertheless, starting around July 13, 2002, Patterson regularly worked from 8:30 a.m. to either 2:30 or 3:00 p.m.

In the period from January 1, 2002 through September 11, 2002, the records show that Patterson worked from 8:30 a.m. to 3:00 p.m. on 114 out of 149 days. On the other days she worked a wide variety of other hours.

During the period from September 10, 2002, (before and after Patterson claims that her work schedule was changed), the records show that on most days she worked from 10:00 a.m. to 3:00 p.m. Thereafter, from November 14, 2002, the records show a consistent pattern of Patterson working from 10:00 a.m. to 2:30 p.m.

It is noted that at one point, the Respondent offered Patterson a full-time job, but Patterson refused because it interfered with her other job, which consisted of being an attendant on a bus, which brought consumers to the facility, normally before 8:30 a.m.

The pattern of her work record shows that for a period of time after she began her employment, Patterson normally worked from 8:30 a.m. to 3:00 p.m. But this pattern changed in September 2002; at least two months before she alleges that she was told by Garnett that she was no longer going to work more than from 10:00 a.m. to 2:00 p.m. Patterson testified Garnett told her that the reason her hours were going back to 10:00 a.m. to 2:00 p.m., (her original schedule), was because the Company had hired a new person and therefore, Patterson was not needed for the extra hours.

The facts indicate that immediately before November 2002, Patterson, even if she did not work a schedule from 8:30 a.m. to 3:00 p.m., usually worked more than 4 hours per day. That is, during the period from September 12 to November 14, 2002, when her hours of work were somewhat indeterminate, Patterson's work schedule changed and became determinate after November 14, 2002 when she essentially was given a fixed schedule that ran from 10:00 a.m. to 2:00 p.m. This resulted in a reduction in the number of hours that she normally worked.

The General Counsel and the Union's counsel cite *Millwrights, Conveyors and Machinery Erectors Local Union No. 1031*, 321 NLRB 30, (1996) and this seems to be dispositive. In that case, the Board held that the Employer's change in a single employee's hours of work had a "significant impact on her" and therefore that the Respondent violated the Act when it made this change unilaterally. The Board stated:

> Although not raised by the parties in this case, we note that the Board has held in some prior cases, without any analysis or rationale, that a change in terms or conditions of employment affecting only one employee does not constitute a violation of Section 8(a)(5). See *Mike O'Connor Chevrolet*, 209 NLRB 701 (197); *Mark J. Leach Electrical Contractors*, 251 NLRB 1100 (1980); and *Santa Rosa Blueprint Service*, 288 NBLB 762 (1988). We find that this holding, which would require the dismissal of the complaint in this case, is erroneous as a matter of law, and we overrule those cases to the extent inconsistent with our decision in this

case.

(d) Elimination of Holiday and Bereavement Pay for Part Time Employees

The Respondent's employee guidebook has a provision which states that regular full time employees are eligible for certain benefits such as holiday pay. The guidebook also establishes bereavement pay, but this is limited to circumstances where the death involves a spouse, child, parent, grandparent, siblings or parents-in-law.

With respect to holiday pay, Tina Richmond announced in November 2002, that employees who worked fewer than 20 hours per week are not entitled to holiday or bereavement pay. No notice was given to the Union about these alleged changes and thereafter, this group of employees no longer received holiday or bereavement pay.

The Company contends "the undisputed facts demonstrate that UCP consistently applied, for the most part, its policy of providing holiday pay only to full-time employees." It argues that "the relatively few, sporadic instances in which this policy was misapplied do not rise to the level of a change." The Respondent maintains the same position vis a vis bereavement pay.

Holiday Pay

Joint Exhibit 1 is a list of all the regular part-time employees who worked 20 or fewer hours per week during the year 2001. There are eight people on this list including a person named Andrea Schmitz who was assigned to the pre-school program. Where the exhibit has a NA this means that the person on that day was either not employed or not employed in a category covered by the bargaining unit.

With respect to Schmitz, the Charging Party asserted that I should not consider her as part of the affected group because she worked in the pre-school program and the Union is not claiming that any change was made to her holiday pay benefit. (She received zero paid holidays). I am not sure I understand what the Charging Party Counsel means by this and if the question here is whether there was a past practice that affected part-time employees and that this practice was changed in November 2002, I don't see why Schmitz's experience should be excluded, unless her job was not in the bargaining unit.

In any event, Joint Exhibit 1 shows the following:

Chantal Betamuriza did not work but was paid for Labor Day, Thanksgiving, the Day after Thanksgiving, Christmas Eve, and Christmas Day. There were no holidays during 2001, during the time that she worked, that she did not receive holiday pay.

Maria Cruz did not work but was paid for Thanksgiving, the day after Thanksgiving, Christmas Eve, and Christmas Day. There were no holidays during 2001 during the time that she worked, that she did not receive holiday pay.

Peggy Johnson did not work but was paid for July 4, Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve and Christmas Day. Joint Exhibit 1 also shows that during the time of her employment, she did not work and was not paid for Memorial Day, Labor Day, Rosh Hashanah, and Yom Kippur. It also shows that she worked and was therefore paid for Columbus Day and that she was not credited with or paid for any floating holidays.

Janet Malcolm did not work but was paid for New Years Day, Martin Luther King Jr. Day, Memorial Day, July 4, Labor Day, Columbus Day, Thanksgiving, the day after Thanksgiving, Christmas Eve, Christmas Day and New Years Eve. She worked on Presidents Day, Good Friday, Rosh Hashanah and Yom Kippur and received pay for 2 floating holidays.

Andrea Schmitz. The exhibit shows that there were no holidays that she did not work for which she received any pay. The exhibit shows that during her employment in 2001, she worked on Good Friday without getting any equivalent paid time off and that she did not work and was not paid for New Years Day, Martin Luther King Jr. Day, Presidents Day, Memorial Day, July 4, Labor Day and Rosh Hashanah.

Mike Wiggins, during the time that he was employed in 2001, did not work but was paid for Christmas Eve and Christmas Day.

Nicole Woodson, during the time that she was employed in 2001 she did not work but was paid for Labor Day, Thanksgiving Day, the day after Thanksgiving, Christmas Eve, and Christmas Day. In addition, the exhibit shows that although she worked on Rosh Hashanah and Yom Kippur, she was paid for floating holiday days that she took off on October 30, November 15 and November 16.

By my count, the total scheduled days off that were paid to this set of part time employees was 40 days. On the other hand, the total number of holidays that were not paid to this group was 15, with the most concentrated in one individual, Andrea Schmitz. (If we excluded Schmitz, the total number of unpaid holidays would be seven).

Joint Exhibit 2 is a similar list for the year 2002. It includes the experience of the thirteen part-time employees, (who worked 20 or fewer hours), to the extent that they were employed, during the year, in bargaining unit job classifications. I note that the exhibit shows their experience for the entire year including the period from Thanksgiving on, which is when the Respondent stopped making holiday payments to this group of employees.

The exhibit showed the following:

Chantal Batamuriza, during the time that she was employed in 2002 and until Thanksgiving, did not work but was paid for New Years Day, Martin Luther King Jr. Day, Memorial Day, July 4, and the day after July 4. She was out sick on President's day and worked on floating holidays, Good Friday, Yom Kippur and Columbus Day. She received pay for 2 floating holidays, these being on February 25 and June 10.

Maria Cruz, during the time that she was employed in 2002 and until Thanksgiving, did not work but was paid for New Years Day, Martin Luther King Jr. Day, Memorial Day, July 4, the day after July 4 and Labor Day. She worked on Good Friday, Yom Kippur and Columbus Day but received pay for floating holidays on February 25 and June 10. She was sick on Presidents Day. The exhibit also shows that she did not work and was not paid for Good Friday.

Charles Gadson, during the time that he was employed in 2002 and until Thanksgiving, he did not work but was paid for Labor Day. He worked without getting equivalent days off with pay on Yom Kippur and Columbus Day.

Dwight Hardware was a part-time employee but all of the entries are listed as not applicable.

Samuel Hudson, did not work on New Years Eve and was not paid. He worked on Martin Luther King Jr. Day and did not receive any equivalent day off with pay.

Peggy Lee Johnson, during 2002 and until Thanksgiving, did not work but was paid on New Years Day, Martin Luther King Jr. Day, Memorial Day, and July 4. The exhibit shows that she worked on floating holidays Presidents Day and Good Friday and that she received a floating holiday with pay on October 23. The exhibit also shows that she was on disability during the period encompassing Labor Day, Yom Kippur and Columbus Day.

Sylvia Lewis, during the time she was employed in 2002 and until Thanksgiving, did not work but was paid for Labor Day. She worked on Yom Kippur and Columbus Day, without receiving any equivalent day off with pay.

Janet Malcolm, during the time she was employed in 2002 and until Thanksgiving, did not work but was paid for New Years day, Memorial Day, July 4, and the day after July 4. She worked on President's Day and Good Friday, (floating holidays) and did not get an equivalent day off with pay.

Jamie Marazio, during the time he was employed in 2002, did not work on any of the holidays and did not get paid for any of them. (A total of eight). She is listed on the exhibit as being in the pre-school program.

Lizzie Navarro, during the time that she was employed during 2002 and until Thanksgiving, did not work but was paid for Labor Day. She did not work and was not paid for Yom Kippur. The exhibit also shows that she worked on Columbus Day and did not receive any equivalent day off with pay.

Pamela Patterson, during the time that she was employed in 2002 and until Thanksgiving, did not work but was paid for New Years Day, Martin Luther King Jr. Day, Memorial Day, July 4, the day after July 4 and Labor Day. She did not work and was not paid for Good Friday. She worked on Yom Kippur and Columbus Day and received one floating holiday with pay for October 24. The exhibit also indicates that she was out for the entire week, which included Presidents Day and was not paid for that day.

Nicole Woodson, during the time that she was employed in 2002 and until Thanksgiving, did not work but was paid for New Years Day, Martin Luther King Jr. Day, Memorial Day and Labor Day. She did not work on July 4 and the day after July 4 and was not paid for those days. (The exhibit indicates that she was out for two weeks so I assume that she was either sick or on vacation or on some other kind of leave). Additionally, the exhibit shows that she worked on four holidays, (President's Day, Good Friday, Yom Kippur and Columbus Day), but received floating holidays with pay for two days, April 4 and September 24.

By my count, during 2002 but before Thanksgiving, the total scheduled holidays that employees in this set took off and were paid for, totaled 45 while the total number of holidays that they either took off and were not paid, or worked and were not given equivalent days off with pay, totaled 33. And in the latter category, the totals of unpaid holidays were skewed by the inclusion of Samuel Harrison and Jaime Marazio, neither of who were paid for any holidays. As noted above, Marazio is listed on Joint Exhibit 2 as being in the pre-school program. And Harrison seems to have been employed for a very short time.

I am not counting from Thanksgiving on because it was at that point that the Company

announced that part-timers in this category would not get holiday pay any longer. And in looking at Joint Exhibit 2, it looks like the Respondent ceased paying these part-time employees for holidays as of Columbus Day, (October 14), even before it made the announcement.

With respect to holiday pay, the joint exhibits hardly show that there were minimal or sporadic instances where the Respondent mistakenly varied from the practice set out in its employee handbook. For 2001, the pattern was that with the exception of Schmitz, regular part-time employees who worked 20 or fewer hours, normally received holiday pay. And although the pattern is less definite in 2002, this group of employees, except for Harrison and Marazio, received holiday pay a majority of the time. For 2001 and 2002, (until Thanksgiving), was the mistake in giving them holiday pay or was the mistake in not giving them holiday pay?

Since the only evidence presented by the Respondent on this question was the summaries comprising Joint Exhibits 1 and 2, the evidence, in my opinion, tends to establish that during that two year period of time, the Respondent, notwithstanding what was written in its handbook, had a past practice of giving holiday pay to its regular part-time employees in the day treatment but not the pre-school program, even if they worked fewer than 20 hours per week.. Thus, when the Respondent announced soon after Thanksgiving that holiday pay would no longer be given to part-time employees who worked less than 20 hours per week, this was, in my opinion, a change in a relatively long standing practice concerning a substantial term and condition of employment. Therefore, as the Union was not given notice or an opportunity to bargain about this change, I conclude that the Respondent, in this respect, violated Section 8(a) (1) & (5) of the Act.

Bereavement Pay

The Respondent's handbook permits full time employees to have a maximum of 3 days of bereavement pay per year.

Joint Exhibit 1 shows that Pamela Patterson received bereavement pay for September 28 and October 1, 2001. It also shows that she took off from August 13 to 15 for bereavement purposes and was not paid for those days.

Joint Exhibit 1 also shows that Nicole Woodson received bereavement pay for the days that she took off on October 3 and 4, 2001.

Joint Exhibit 2 shows that Janet Malcolm took off from April 30 to May 2, 2002 for bereavement purposes and was paid for 12 hours.

Joint Exhibit 2 also shows that Nicole Woodson took off from August 13 to August 15, 2002 for bereavement purposes and was not paid.

Joint Exhibits 1and 2 therefore show a somewhat mixed picture insofar as bereavement pay. But without testimonial explanation, I can't see which was the mistake; paying the bereavement benefit or not paying it.

For the same reasons as discussed above with respect to holiday pay, I conclude that the evidence tends to establish that for a substantial period of time, the Respondent had a past practice of giving bereavement pay to certain part-time employees. As such it is my opinion, that the General Counsel has established by a preponderance of the evidence that this practice was changed on or after Thanksgiving 2002 and that in so doing, without notice or bargaining, the Respondent violated Section 8(a) (1) & (5) of the Act.

(e) Elimination of Early Release Before Holidays

The Company provides programs for disabled individuals who come to its facilities during the day. However, from time to time, the consumers leave early on the days before holidays and accordingly, there is nothing for the staff to do after the consumers leave. In such circumstances, according to employee Catherine Gillen, the staff has been allowed to leave early on a Friday, when the scheduled holiday occurred on the following Monday. In this respect, Gillen testified that the staff would be allowed to leave only after the consumers leave the facility and that the early release time depends on the time that the consumers go home.

The Respondent's published Holiday Calendars for the years 2001 and 2002, state:

> Program dismissal for adult consumers assigned to Day Treatment and the Sheltered Workshop will be 2:00 p.m. the day before all holidays listed on this schedule. This includes float holidays. Please note that as per Program Operations Procedural Memorandum 99-1 (attached), the intent and purpose of early dismissal is for the benefit of consumers. Staff are expected to work the normal schedule unless notified by the program director.

For 2003, the Respondent changed the language described above to read as follows:

> Program dismissal for adult consumers assigned to Day Treatment and the Sheltered Workshop will be 2:00 p.m. the day before the following holidays: July 4th, November 27th, and December 25th. This includes float holidays. Please note that the intent and purpose of early dismissal is for the benefit of consumers. Staff are expected to work the normal schedule unless notified by the program director. (Underlined for emphasis).

The difference between the pre and post 2003 language is that the new language restricted the possibility of early release to three specific holidays whereas the old language was applicable to any holiday. Thus, potentially this change could result in a diminution of this benefit to unit employees. As such, it is my conclusion that this was a change in a term and condition of employment, that the change was not trivial or insubstantial and that it therefore required prior notice and bargaining.

On January 20, 2003, Martin Luther King Day, (one of the listed holidays), took place on Monday but the employees were not released early on Friday, January 17, 2003. On this Friday, the consumers did not leave the facility early and therefore, the Respondent's staff was required to stay to the day's normal quitting time.

With respect to January 17, 2003, it is not clear from this record why the consumers were not sent home early on that day. I do not know if this was the result of a decision made by the Respondent or if was made because of some decision or event outside the control of the Respondent. In any event, that could be a matter determined at the compliance stage of this proceeding.

(f) The Holiday Vote

For 2002, the holiday calendar that was posted in January, listed July 5 as a day off but did not list December 23, 2002 as an off day. This was different from what had occurred in

previous years, albeit the total number of holidays was the same.

On June 5, 2002, the Respondent by Stephen Madley, issued a memorandum, which stated in pertinent part;

> The question has been raised as to why we are scheduled to take July 5th off and not Christmas Eve. In preparing the schedule, the administration looks at the legal holidays for the year and attempts to provide more continuous time off whenever possible. This year, July 4th falls on a Thursday and administration felt that by giving the following day off employees would be then able to enjoy a four-day weekend. Some employees have asked for an additional day off for Christmas Eve, which is something that we are unable to do. However, in response to your requests, I am asking you to vote on whether you would prefer to have July 5th or Christmas Eve off. We will hold the vote on Friday morning June 7th…. Results will be made available prior to the end of the day.

Subsequent to this memorandum, the Respondent conducted a vote and the employees elected to retain the December 23 day off rather than have July 5th as their day off.

The fact that employees may have approached the Respondent about this issue, (and another issue involving snow days), and that the Respondent may have acted without an intent to breach its bargaining obligation, is irrelevant. The fact is that the Union and the Respondent were engaged in collective bargaining as of June 5, 2002 and the issue of whether to take off either December 23 or July 5 was not discussed or agreed upon by the Union and the Company.

This may not have been the most earth shattering issue. But it was a matter which concerned employee terms and conditions of employment. Moreover, the fact that the employees voted to retain the old day off, thereby resulting in no change, is not relevant because the issue here is not one of unilateral change but rather one of bypassing the employees' union representative. As such, it is the Respondent's obligation to bargain with the Union and not to bypass the Union and deal directly with the employees. *Medo Photo Supply Corp v NLRB,* 321 U.S. 678 (1944); *Harris-Teeter Super Mkts*., 310 NLRB 216 (1993); *The Dow Chemical Company* 227 NLRB 1005 (1977). According, I conclude that in this respect the Respondent has violated Section 8(a) (1) & (5) of the Act.

Conclusions of Law

1. By unilaterally reducing the hours of Pamela Patterson without giving notice to or offering to bargain with Union of Needletrades, Industrial and Textile Workers, (UNITE), AFL-CIO, CLC, the Respondent has violated Section 8(a) (1) and (5) of the Act.

2. By unilaterally discontinuing the practice of releasing employees early on the Friday before a holiday occurring on a Monday, the Respondent has violated Section 8(a) (1) and (5) of the Act.

3. By dealing directly with employees and bypassing their union representative by holding a vote among them in order to determine their preference regarding a portion of their holiday schedule, the Respondent has violated Section 8(a) (1) and (5) of the Act.

4. By unilaterally eliminating holiday and bereavement pay to certain regular part-time bargaining unit employees the Respondent has violated Section 8(a) (1) and (5) of the Act.

The Remedy

Having found that the Respondents have engaged in certain unfair labor practices, I find that they must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent has unilaterally reduced the hours of Pamela Patterson, it is recommended that it be required to make her whole for any loss of earnings that she suffered as a result of this action, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

With respect to holiday and bereavement pay, it is recommended that the Respondent be required to make the affected employees whole for any loss of earnings that they may have suffered as a result of this unilateral change, plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

With respect to the question as to whether back pay would be appropriate for the failure of the Respondent to give its employees an early release on January 17, 2002, I shall leave for compliance to determine if these employees would have not have been released early on that day notwithstanding the unilateral change in the language of the posted calendar.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended [2]

ORDER

The Respondent, United Cerebral Palsy Association of Westchester, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Making unilateral changes in the wages, terms and conditions of employment of union represented employees without first giving notice to and offering to bargain with Union of Needletrades, Industrial and Textile Workers, (UNITE), AFL-CIO, CLC.

(b) Bypassing the Union and dealing directly with employees about any of their terms and conditions of employment.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Upon request of the Union, rescind any of the unilateral changes found to be unlawful herein.

[2] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(b) Make employees whole, with interest, to the extent that they suffered a loss by virtue of the unilateral changes found to be unlawful herein.

(c) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of back pay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its facilities in Westchester, New York, copies of the attached notice marked "Appendix." [3] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed a facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since January 1, 2002.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C.

_____
Raymond P. Green
Administrative Law Judge

[3] If this Order is enforced by a Judgment of the United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX
NOTICE TO EMPLOYEES
Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain with us on your behalf.
Act together with other employees for your benefit and protection.
Choose not to engage in any of these protected activities.

WE WILL NOT make unilateral changes in the wages, terms and conditions of employment of union represented employees without first giving notice to and offering to bargain with Union of Needletrades, Industrial and Textile Workers, (UNITE), AFL-CIO, CLC.

WE WILL NOT bypass the Union and deal directly with employees about any of their terms and conditions of employment.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request of the Union, rescind the unilateral changes found to be unlawful in this case.

WE WILL notify the Union and offer to bargain in good faith with it before making any changes in the wages and terms and conditions of employment for the employees in the bargaining unit represented by the Union.

WE WILL make whole any employees for any losses suffered by reason of the unilateral changes as set forth in the Remedy section of this decision.

Cerebral Palsy of Westchester County Inc.

(Employer)

Dated _____ **By** _____

(Representative) **(Title)**

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

26 Federal Plaza, NY 10278–0104, Telephone 212–264–0346. Hours: 9 a.m. to 5:30 p.m.
THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, 860-240-3528.